

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1880.—Ordered to be printed.

Mr. GARLAND, from the Committee on Territories, submitted the following

REPORT:

[To accompany bill H. R. 5048.]

*The Committee on Territories, to whom was referred the bill H. R. 5048, having had the same under consideration, report as follows :*

Upon an examination of the Revised Statutes of the United States we find that section 1856 provides that "Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide"; and section 1857 provides that "All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory," &c. From these two sections it appears that while all county officers, except justices of the peace and officers of the militia, may be elected or appointed in the manner provided by the governor and legislative assembly, yet justices of the peace must be elected and cannot be appointed, and the question arises as to whether a vacancy arising in the office of justice of the peace can be filled by appointment instead of by election.

Under section 1857 the governor and legislative assembly of a Territory may provide that county officers, with the exception aforesaid, may be appointed instead of elected; and also that all vacancies which may occur in such county offices may be filled by appointment. It seems to be doubtful whether, as the law now stands, the governor and legislative assembly can provide for filling vacancies in the office of justice of the peace by appointment, although we are informed that in all the Territories such a law exists. In one Territory we are informed that two out of the three justices of the supreme court have held that the Territorial statute providing that vacancies in the office of justice of the peace shall be filled by appointment of the board of county commissioners was invalid, as being in violation of the two sections of the Revised Statutes of the United States above quoted. To require that a vacancy in such an office, of an inferior grade, must be filled only by election, while more important offices can be filled by appointment, seems an anomaly, and must evidently have been an oversight or mistake made in codifying the Statutes at Large. To require vacancies in the office of justice of the peace to be filled by a special election would entail an additional and useless expense on the people. In many of the Territories the legislature will not convene until January, 1881, and as there is no Territorial

statute providing for special elections to fill such vacancies, in many townships and counties there would be found no justice of the peace before whom persons accused of crime could be brought for examination.

Your committee are of the opinion that the interests of the people resident in the Territories demand the adoption of some measure to relieve against this difficulty, and believing this bill will accomplish that object, they recommend its passage.